

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 927 Homestead Assessments
SPONSOR(S): Civil Justice & Courts Policy Committee; Kiar
TIED BILLS: None IDEN./SIM. BILLS: SB 1884

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 13 Y, 0 N, As CS, Bond, De La Paz.

SUMMARY ANALYSIS

The voters enacted a limit on property valuation used in assessing local ad valorem property taxes known as Save Our Homes. Under that provision, annual increases in valuation for tax purposes on homestead property are limited during the period that a person maintains the homestead exemption.

This bill provides that transfers between different forms of equitable title similarly are not considered a change in ownership, provided that the same individual continues to qualify for the homestead tax exemption.

Similar to Save Our Homes, there is a cap on annual increases of valuation for property tax purposes applicable to nonhomestead property that similarly increases valuation to full taxable value on a change in ownership.

This bill appears to have an indeterminate fiscal impact on local government revenues. This bill does not appear to have a fiscal impact on state government.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background - Homestead Property**

Local governments are authorized to impose ad valorem taxes, which are taxes charged as a percentage of the value of the property, by art. VII, s. 9 of the state constitution. The valuation of real property for purposes of ad valorem taxation is subject to several limitations and deductions. One limitation is popularly known as the Save Our Homes amendment, at art. VII, s. 4(c).

The Save Our Homes amendment was enacted at the 1992 general election as a petition initiative. As to homestead property, the amendment limits any annual increase in valuation for property tax purposes to the lesser of 3% of the assessment for the prior year or the percent change in the consumer price index, whichever is less. Upon any change of ownership, however, any Save Our Homes savings on that property no longer apply, and the property must be assessed at just value as of January 1 of the following year. This bill addresses changes in ownership.

Section 193.155, F.S., implements the Save Our Homes amendment. Subsection 193.155(3), F.S., provides that there is no change in ownership when, following a change or transfer, the same person is entitled to the homestead exemption as was previously entitled and the transfer is between legal and equitable title.<sup>1</sup> Under current law at s. 193.155(3), F.S., the following types of real property transfers are not considered a change of ownership that triggers an increased assessment at just value:

- Any transfer in which the person who receives the homestead exemption is the same person who was entitled to receive homestead exemption on that property before the transfer, and
  - The transfer of title is to correct an error;
  - The transfer is between legal and equitable title; or
  - Where owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee (unless one of the other individuals applies for a homestead exemption on the property).

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<sup>1</sup> Legal title refers to the duties and responsibilities of maintaining and controlling some property, while equitable title refers to the benefits and enjoyment of that property. The essence of a trust is splitting the legal title and equitable title in property such that one or more people (the trustees) have the legal title and control the property while others (the beneficiaries) own the equitable title and get the use and enjoyment of the property.

- The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage, provided that the transferee applies for and receives the homestead exemption;
- The transfer, upon the death of the owner, is between the owner and a legal or natural dependent who permanently resides on the property; or
- The transfer occurs by operation of law under s. 732.4015, F.S., which section details the inheritance rights of surviving spouses and children.

The provisions by which a transfer between legal and equitable title are not considered a change in ownership under Save Our Homes recognizes that individuals commonly transfer their home to some legal entity, usually a trust, as part of common estate planning activities. So long as such individuals continue to reside in the home and claim the homestead exemption, such transfer is not in effect the type of change of ownership that was intended as one that would trigger a loss of the Save Our Homes benefit.

### Qualified Personal Residence Trust

A type of equitable title permitted under the Internal Revenue Code is a Qualified Personal Residence Trust (QPRT). A QPRT is an estate planning device whereby the settler creates an irrevocable trust funded by the transfer of a personal residence to the trustee while retaining in the transferor a right to reside on the property for a term of years.<sup>2</sup> This strategy is part of the federal income tax code which allows homeowners to transfer property to their children while avoiding future estate taxes.<sup>3</sup> This transfer from legal to equitable ownership is not a change in ownership that leads to loss of the Save Our Homes savings.

The transfer of the personal residence allows the individual to retain the right to use the residence rent-free for a specified period of time (also called the “retained term interest”). In these cases, the tax savings occur only if the grantor of the trust survives the period of his or her retained interest. Two district courts of appeal in Florida have held that the individual continues to be eligible to receive the homestead ad valorem tax exemption during the retained term interest.<sup>4</sup>

At the conclusion of the retained term interest, legal title is transferred to the beneficiary. However, it is not uncommon for the settlor of the trust, who has been living in the property and enjoying the Save Our Homes limitation, to wish to remain in their home. Under these circumstances, some advisers have recommended that the individual enter into a lease for a term of at least 98 years (leasehold interest<sup>5</sup>), which they believe should enable the individual to continue to receive the homestead ad valorem tax exemption.<sup>6</sup>

However, it is reported that at least one property appraiser’s office has taken the position that that this second change of ownership, a change or transfer of ownership between two equitable titles, will result in the homestead real property being reassessed for purposes of determining ad valorem taxes subsequent to the transfer. Thus, under the reasoning of at least one property appraiser’s office, an individual who creates a new revocable inter vivos trust and transfers ownership of his or her homestead real property from the old trust to the new trust would be subject to having his or her homestead real property reassessed and would lose the benefit of the SOH cap that had been in effect prior to the transfer. In other words, this “change in ownership” is not protected under the provisions of

<sup>2</sup> Jeffrey A. Baskies, *Understanding Estate Planning with Qualified Personal Residence Trusts*, 73 Fla. B.J. 72 (1999).

<sup>3</sup> I.R.C. § 2702; Peter A. Borrok, *Four Estate Planning Devices to Get Excited About*, N.Y.St.B.J., Jan. 1995, at 32; David C. Humphreys, Jr., *Qualified Personal Residence Trusts: “Have Your Grits and Eat Them, Too!”*, S.C.Law., Nov.-Dec. 1994, at 45.

<sup>4</sup> *Robbins v. Welbaum*, 664 So.2d 1 (Fla. 3rd DCA 1995), and *Nolte v. White*, 784 So.2d 493 (Fla. 4th DCA 2001).

<sup>5</sup> A leasehold interest is a claim or right to enjoy the exclusive possession and use of an asset or property for a stated definite period, as created by a written lease.

<sup>6</sup> See s. 196.041, F.S., and *Higgs v. Warrick*, 2008 WL 4866310 (Fla.App. 3 Dist.).

s. 193.155(3), F.S., and the homestead property must be reassessed when transferred from one inter vivos trust to another, even if the equitable owner remains the same.

### **Effect of Bill - Homestead Property**

This bill amends s. 193.155(3), F.S., to provide that certain transfers between certain equitable interests will not be considered a change in ownership and therefore will not trigger an increased property tax assessment under the Save Our Homes provisions of the state constitution. The following transactions are added to the list of transactions that are not a change of ownership:

- A transfer from one form of equitable title to another form, provided that no additional person applies for a homestead exemption on the property and provided that the same person is entitled to the homestead exemption as was previously entitled.
- Equitable title is changed or transferred between husband and wife.

This bill also corrects a cross-reference error in s. 193.155(3)(c), F.S. That section references s. 732.4015, F.S., which refers to a devise<sup>7</sup> of property by operation of law. However, a devise is a direction to transfer property through a will, a devise is not an actual transfer of property and a devise is not "operation of law". The bill amends the cross-reference to refer to intestate descent of the homestead under s. 732.401, F.S., which section provides for a transfer of property by operation of law.

This bill also provides that any leasehold interest that qualifies one for the homestead exemption is to be treated as an equitable interest. Thus, a transfer involving a qualified personal residence trust may qualify as a transfer that does not trigger an increased assessment.

### **Background and Effect of Bill - Nonhomestead Property**

Following the lead of the Save Our Homes Amendment, the constitution was amended to provide a similar cap for nonhomestead properties. Article VII, s. 4(f) provides that the tax appraised value of nonhomestead property, except as applied to school taxes, may not increase more than 10% over the previous year assessment. However, upon a change in ownership, the property assessment must be increased to full value.

In the case of homestead property, a change of ownership is generally easy for the property appraiser to discover because a deed is recorded. In the case of nonhomestead property, however, a change in ownership may not be apparent from a simple review of public records. It is common for commercial property to be held as by a business entity, where a change in ownership can be accomplished by a transfer of the shares of the entity. In order to capture this form of change of ownership, s. 193.1556, F.S., requires the owner of nonhomestead real property to notify the property appraiser of a change in ownership or control. There are substantial penalties for failure to give such notification.

This bill creates an exception to the notice requirement. Where a change of ownership is because of a receivership action by the Federal Deposit Insurance Corporation (commonly known as the FDIC), there is no requirement for notification if the change in ownership occurred or occurs in the calendar years 2008 through 2011.

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<sup>8</sup> Section 731.201, F.S., addresses the general provisions of the probate code and defines "devise" as follows: when used as a noun, "devise" refers to a testamentary disposition of real or personal property. When used as a verb, "devise" refers to disposing of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in the probate code, the will, or the trust. "Devise" is expanded upon in s. 732.4015, F.S., to include a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.

**B. SECTION DIRECTORY:**

Section 1 amends s. 193.155(3), F.S., regarding homestead assessments.

Section 2 amends s. 193.1556, F.S., regarding notification of a change of ownership of nonhomestead real property.

Section 3 provides an effective date of July 1, 2010.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference has not reviewed this bill for this legislative session. Last year, the conference determined that a similar bill containing only Section 1 would have an indeterminate impact on local ad valorem tax revenues.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate. However, even though this bill would have a negative indeterminate fiscal impact on local governments, an exemption applies because this impact is not expected to exceed \$1.9 million. Therefore, the mandates provision does not apply because the fiscal impact is insignificant.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The Department of Revenue may have to make minor changes to Rule 12D-8.0061 as a result of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2010, the Civil Justice & Courts Policy Committee adopted one amendment to this bill. The amendment added the section regarding notice of a change of ownership of nonhomestead real property. The bill was then reported favorably as a committee substitute.